

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:10CV484
(3:08CR256)

TERRENCE DEVON GARMON,)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

)

ORDER

THIS MATTER is before the Court on the Petitioner’s Motion for a Certificate of Appealability, filed February 17, 2011. (Doc. No. 7.).

On September 29, 2010, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 alleging, among other issues, that his counsel was ineffective for failing to file an appeal on his behalf when requested to do. (Doc. No. 1). On February 7, 2011, this Court conducted an evidentiary hearing on Petitioner’s claim that his attorney failed to file an appeal on his behalf when requested to do so. The Court dismissed Petitioner’s claim concluding that Petitioner failed to meet his burden, by a preponderance of the evidence, that there was an unequivocal request that his counsel file an appeal on his behalf and directed that the United States Attorney file an Answer to Petitioner’s remaining claims in his Motion to Vacate. (Minute Entry 2/7/11).

Petitioner seeks a certificate of appealability with respect to his claim that his counsel failed to file an appeal on his behalf. Rule 11(a) of the Rules Governing Section 2255 Cases, provides that “[t]he district court must issue or deny a certificate of appealability when it enters a

final order adverse to the applicant. Rules Governing § 2255 Proceedings, Rule 11(a), 28 U.S.C.A. foll. § 2255. The Order Petitioner seeks to appeal is not a final order in this case as there are several more claims from Petitioner's Motion to Vacate that have not yet been ruled upon. See United States v. Gatewood, 316 F. App'x 226 (4th Cir. March 9, 2009) (unpublished) (Court dismissed Petitioner's appeal and denied certificate of appealability where Petitioner sought to appeal only Peak claim when other claims in 2255 motion had not yet been decided).

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for a Certificate of Appealability (Doc. No. 7) is denied.

SO ORDERED.

Signed: February 22, 2011

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

